

EXHIBIT E

In the United States District Court
For District of Columbia

JAMES HALL, plaintiff

C.A.#: 04-1328-GMS

v.

David Holman ET AL;

Defendants

Memorandum of Law in Support of the Plaintiff's Motion
for the Appointment of Counsel

Statement of the case:

This is a civil Rights case filed under 42 U.S.C. § 1983 by a state prisoner and asserting claims for the unconstitutional Subjection of cruel and unusual punishment, harsh condition of confinement posing a substantial risk of serious harm and The Plaintiff seeks Damages as to all claims and an injunction to ensure prison officials to use available inmate classification information and procedure to predict compatibility of incoming cellmates for stable celling because current random assignment of cellmates substantially increase risk of violence in violation of the Eighth amendment.

Statement of fact

The Complaint alleges that the plaintiff was assaulted by his cellmate, receiving a serious injury (i.e. The loss of a tooth) he was examined by the DC. Hospital where emergency treatment was performed to try and save the tooth. To no avail, and caused severe other teeth. The head nurse put the plaintiff down for "Emergency Dental" the plaintiff informed Defendants that he was not physically able to defend himself because he suffered from a broken right hand and asked to be relocated to another cell because not cellmate a very dangerous inmate was threatening bodily harm to plaintiff and the altercation occurred on a daily basis and became more and more violent plaintiff made representative request to be relocated to David Holman (Security Superintendent (Clyde D. Sagers Actual Deputy warden I) (union organizer) Deputy warden. The plaintiff on 6-6-04 was violently attacked by (Tennah (complaint of) "Anthony Coffield" Defendant, David Holman, was responsible for plaintiff cell assignment Defendants, David Holman et al, with requisite state of mind, knew that plaintiff faced a substantial risk of serious harm also knew and disregarded an excessive risk to plaintiff's health safety and disregarded that risk by failing to take reasonable measures to abate it. The plaintiff was suffered the unnecessary and wanton infliction of pain in violation of the Eighth Amendment. Defendants were aware of this objectively intolerable risk of harm and subjectively disregarded it. The subjectively - perception was sufficiently serious and the official was acted with deliberate indifference to inmate health or safety. The defendant bore an affirmative obligation to provide protection from assault by other inmates but failed to do so.

Argument

The Court Should Appoint Counsel for the Plaintiff

In deciding whether to appoint counsel for an indigent litigant, the Court should consider "the factual complexity of the case, the ability of the indigent to investigate the facts, the existence of conflicting testimony, the ability of the indigent to present his claim and the complexity of the legal issues." *Abdullah v. Fisher*, 949 F.2d 1032, 1055 (8th Cir. 1994) (citation omitted), cert. denied, 112 S. Ct. 1995 (1992). In addition, courts have suggested that the most important factor is whether the case appears to have merit. *Cooper v. Sargent Co., Inc.* 877 F.2d 170, 173 (2d Cir. 1989). Each of those factors weighs in favor of appointing counsel in this case.

1. Factual Complexity. The plaintiff alleges that several Top Level Correctional Supervisory officials failed to provide protection from assault from a fellow inmate. He also asserts the Defendants whom were prison supervisors were on notice of the violent propensities of plaintiff's cellmate and did nothing about it. He challenges the condition of confinement of which he is confined. The sheer number of claims and defendants makes this a factually complex case.
2. The Plaintiff's ability to investigate. The plaintiff potential witnesses is locked up in punitive segregation. Plaintiff has no ability to investigate the facts. For example, he is unable to identify, locate and interview the inmates who were housed in nearby cells and who saw some or all the events of 6-6-04. He is in the same situation as an inmate who has been transferred to a different institution, a factor that several courts have cited in appointing counsel. *Tucker v. Rembert*, 948 F.2d 388, 391-92 (3rd Cir. 1994); *Embrey v.* (opinion), 679 F. Supp. 270, 273 (W.D.N.Y. 1988); *Thurston v. Supt.*, 103 F.R.D. 96, 105 (E.D.W.S. 1984).

In addition, this case will require considerable discovery concerning the identity of witnesses, the officers' reports and statement about the incident, the history of the officers with prior records of failure to protect and the plaintiff's medical history. See *Tucker v. Pickery*, 613 F. Supp. 1124, 1133-34 (W.D. W.S. 1985) (Need for discovery supported appointment of counsel).

3. Conflicting testimony. The plaintiff's account of his being subjected to a substantial risk of serious harm and defendant's being aware of that risk most certainly are and is surely in conflict. This aspect of the case will be a credibility contest between the defendant and plaintiff (and such inside witnesses as can be located). The existence of these credibility issues supports the appointment of counsel. *Catson v. Connelly*, 879 F. Supp. 970, 973 (W.D. N.Y. 1985).

4. The ability of the indigent to present his claim. The plaintiff is an indigent prisoner with no legal training, a factor that supports the appointment of counsel. *Whisenant v. Yum*, 739 F.2d 160, 163 (4th Cir. 1984). In addition he has limited access to legal material. *Reyes v. Johnson*, 969 F.2d 700, 703-04 (8th Cir. 1992) (citing lack of ready access to a law library as a factor supporting appointment of counsel).

5. Legal complexity. The number of defendant, "who are supervisory officials", presents complex legal issues of determining which defendant were sufficiently personally involved in the constitutional violation to be held liable.

6. Merit of the case. The Plaintiff's Allegation, if proved, clearly would establish a constitutional violation. The failure of Defendant to Act ~~on~~ a Substantial Risk of harm made obvious in as much as the Plaintiff was presented Exhibits establishing that the Defendant knew that the Plaintiff faced a pervasive risk of harm. Actual knowledge of this fact on the part of the Defendant is supported by Plaintiff several letters to prison official informing them of same and asking for help. The injurious beating alleged in the complaint on 6-6-04 clearly states an Eighth amendment violation see *Farmer v. Brennan*, — U.S. — 114 S. Ct. ~~835~~ ⁸³⁵ ~~836~~ ⁸³⁶. Requirement that prison official show "deliberate indifference" to prisoners, in order to be liable for failure to prevent harm, is satisfied by something less than acts or omissions for the very purpose of causing harm, or with knowledge that harm will result.

Conclusion

For the fore-going reasons, The Court should grant the plaintiff's motion and appoint counsel in this case.

Date: _____

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